

# **DIVORCE HANDBOOK**

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## **MICHIGAN NO-FAULT DIVORCE**

As Most people are of aware, Michigan is a no-fault state. In fact, Michigan has been a no-fault jurisdiction since 1973. Although there are arguments to ending this status of a no-fault jurisdiction, as can be recently attested to by legislation in the Michigan House and Senate, most divorce attorneys would argue that our system has been an effective system. Some have argued that the no-fault status has attributed to the rise in the number of divorces since the 1960's. Most attorneys would argue that changing demographic and socioeconomic factors are responsible for the increase in divorces. Although the no-fault status generally means a 50/50 split in assets, there are certain factors such as fault that can be used in making a breakdown of marital assets. For instance, if it is found that one of the spouses had affairs or was extremely abusive, judges are now reluctant to award more property to the not-at-fault party. For instance, if there are assets of about \$100,000, a judge, depending on the circumstances, would be likely to award anywhere from 55 – 60 % of those assets. The other factors to be looked at also involve the employability of one's spouse.

## **TAX CONSIDERATION IN DIVORCES**

Before one goes on with the divorce there are tax considerations that must be very carefully reviewed. For example, if both spouses are co-owners in a business, it may be necessary to get a legal separation and discuss a structured settlement plan over a period of several years in order to allow one spouse the opportunity to purchase the other spouses interest in a business. If such a plan is not implemented in some businesses both spouses may be hit with a massive tax bill if such a sale is not structured properly. It is strongly suggested especially for high net worth couples and individuals to consult a tax professional before doing a split. Though this is not of primary importance with couples as they come to a decision to split, it will be of significant importance on the judgment day of reckoning. Many folks who are considering divorce do so for many reasons, most importantly the fact that they have drifted apart and they cannot get along. However, it is very important that persons who are contemplating such a decision be aware of the tax consequences of their decisions, this is especially important for couples who have lived in the same house for over 10 years. The new legislation for the home sale capital gains tax exemption softens the blow of a house sale because of a tax exempt status of up to \$500,000 per couple and \$250,000 per single seller but those persons who have a much more expensive house have to be very careful in their divorce plans.

## ECONOMIC IMPACT OF DIVORCE AND SEPARATION

The economic impact of divorce and separation can be brutal. In many situations it can be downright devastating. One of the factors that causes the economic devastation involves setting up two separate households and making an additional payment. I've often advised clients that if their marriage is not at a total breakdown a separation period along with some marital counseling can do wonders. When one comes to a decision of a divorce the moving spouse looks at all the worst qualities of the other spouse. Unfortunately that spouse may not realize that the presently "difficult" situation can end up being very horrible. For instance, if a woman who has been working on a limited basis seeks to get a divorce without any financial support mechanism, it can be truly devastating economically, especially if the spouse whom she is seeking support from is not working steadily or is involved in a business that has peak and non-peak seasons. My suggestion for those persons who are cordial in planning the divorce is that they come to a compromise and allow for a transition period to take place before finally implementing the divorce plan. A perfect example involves selling a house. Whenever you are negotiating you obviously want to do so from a position of strength. You do not want to sell a house while going through a divorce or foreclosure. Therefore, I have advised persons and couples who are considering a separation or divorce to try as best as they can to get their financial house in order and to do as much dividing as possible before ultimately getting a divorce. For example, when a client is adamant about getting a divorce I tell them that they'll be making sacrifices for a while but that the first 2 years determine whether they make it or whether they sink financially. I advise clients, wherever possible to share an apartment or house with a friend so if they have children they are in a position to make child support payments without going under. I also tell them that the ability to compromise with your spouse can save thousands perhaps tens of thousands of dollars that could take place in a nasty divorce conflict.

### Social Security

Even if it is not mentioned in a divorce settlement, a divorced spouse can get benefits on a former spouse's social security record if the marriage lasted at least 10 years. The divorced spouse has to be 62 or older and unmarried. A divorced spouse can start collecting benefits between the age of 50 to 60 if they are disabled.

### Survivor benefits

Unmarried children under the age of 18 are entitled to survivor benefits if the former spouse passes away.

### Credit

This is an area that is very important especially to the spouses who are not regularly paying mortgage payments or credit card bills. It is important that you stay current on bills because the action of one spouse can have a devastating impact on the other spouse, especially if the mortgage is not being paid on time or the credit cards are not being kept up. This is especially true if you are jointly named on a credit card or a home mortgage. It is important that you get a copy of the credit report to determine what your credit rating is. Most importantly you must keep up with payments and be aware of all the outstanding obligations that exist between you and your spouse.

### Private and public retirement programs

It is important, especially for spouses who have been married for at least 10 years, to get an understanding of how much money is in the other spouses retirement programs. In some situations the worth of each spouses retirement program ends up canceling the others worth in a division of assets during the pendency of a divorce. However, this is an area that is of growing importance, especially to a stay at home spouse or a spouse who only works on a part-time basis. The five-year program is generally mentioned because of the fact that most private and public pension programs vest after that period of time. It would be prudent to get a tax professional to determine the worth of the pension program for present and future value.

### CUSTODY OF THE CHILDREN

Custody is truly the most litigious area in the divorce arena. Unfortunately in many situations the children are used as pawns to try to get the other spouse angry. The factors to be looked at in determining custody of the children involve the best interests of the child. If the court feels that neither spouse is acting in the best interest of the child, the court in some situations have appointed guardians to supervise and to raise that child. There are several basic issues in the area of custody. One involves the physical or residential custody, I.e. which parent will the child end up living with. There is also joint legal custody. Both parents can have joint legal custody even if one child resides exclusively with the other parent. With joint legal custody both parents make the decisions on behalf of the children concerning education, health, activities, religion, and general welfare. There are some situations that involve joint physical custody or often referred to as shared parenting. This can occur when one child resides with both parents equally and for a significant period of time. However, such a situation is generally not feasible especially when that child is of school age because most courts and psychologist deem it as necessary to create a stable learning environment.

In making custody decisions courts frown upon any parent who has abused alcohol or drugs. In such a situation, the parent who has abused drugs or alcohol will hardly be likely to get any custody. They will be fortunate to get limited visitation. If such abuse of drugs and alcohol is continuous, the court will order supervised visitation and very rarely grant an over night stay. Courts, with all things being equal, normally award custody to the mother; however in recent

years with a growing number of women who have been successful in the professional ranks, such a trend is becoming less and less likely.

### ALIMONY

Alimony involves money one spouse pays the other for support and maintenance. There are several types of alimony. One involves lumps of alimony, which is used to help put the other spouse on equal footing with the paying spouse. There is also permanent alimony, which is paid until the death of the payer. There is also temporary and rehabilitative alimony. Temporary alimony usually last for several years and is usually done for non-working spouses to allow them the opportunity to maintain their standard of living or to get job training skills. The factors taken in determining the amount of alimony involve several factors. The most important factor involves the duration of the marriage, the income and net worth of both parties, the contribution of one spouse as a homemaker, and most recently courts have begun to award alimony based on the contributions of one spouse in education and furtherance of the career of the other spouse.

### DIVORCE REQUIREMENTS

Michigan is a no fault divorce state like 40 plus other jurisdictions. However fault can be a determining factor in how the property is divided up, along with how much alimony and child support will be paid. For example, if one of the spouses was having an affair or was abusive, that factor could be used by the judge in making a determination as to how marital property was divided or how much alimony was paid. There has to be a breakdown in the marital relationship to the extent that the objects of matrimony have been destroyed and there appears no reasonable likelihood that the marriage can be preserved. The residency requirements in Michigan are 180 days in the County 10 days prior to filing the action for divorce.

### THE OFFICE OF THE FRIEND OF THE COURT

Each county has access to a friend of the court in the state of Michigan. Some counties in Northern Michigan may be combined for a Friend of the Court operation however, any county generally speaking that has more than 60,000 persons has a Friend of the Court operation. The Friend of the Court has psychologists and referees who review motions. Most of this work is for post divorce situations. A husband who has to pay child support may use that court to contest the amount that they are paying and ultimately have a review, a parent may use that office also

to ask for an increase in support or a reduction in visitation, reviews may also be ordered through the Friend of the Court to make revisions in the amount of visitation a parent may have. Unfortunately, the office has been used too often by bitter parents to get back at an ex-spouse. Friend of the court offers recommendations to motions and they may also offer mediation as a way of settling disagreements over custody or visitation of children.

Michigan Friend of the Court address and phone numbers:

Wayne County Friend of the Court 3<sup>rd</sup> Circuit

645 Griswold, Penobscot Building, Detroit, MI 48226 Tel no. 313 224-5272

Oakland County Friend of the Court 6<sup>th</sup> Circuit Executive Director: Joseph Salamone

1200 N. Telegraph Road, Dept. 434, Pontiac, MI 48341 Tel No. 248 858-0424

Macomb County Friend of the Court 16<sup>th</sup> Circuit Administrator: Thomas J. MacDonald

40 N. Main Street, Mount Clemens, MI 48043 Tel No. 810 469-5160

Genesee County Friend of the Court 7<sup>th</sup> Circuit Administrator: Jennie Barkey

1101 Beach Street, Flint, MI 48502 Tel no. 810 257 3300

Kent County Friend of the Court 17<sup>th</sup> Circuit Administrator: William D. Camden

Hall of Justice, 333 Monroe Avenue, N.W., Grand Rapids, MI 49503 Tel No. 616 336-2600

Ingham County Friend of the Court 30<sup>th</sup> Circuit Administrator: Jean O 'Hagan

303 W. Kalamazoo Street, Lansing, MI 48933 Tel No. 517 483-6103 Ext. 6163

Washtenaw County Friend of the Court 22<sup>nd</sup> Circuit

101 E. Huron, P.O. Box 8645, Ann Arbor, MI 48107 Tel no. 734 994-2466

Kalamazoo County Friend of the Court 9<sup>th</sup> Circuit Director: Ronald Kirshman

227 W. Michigan Ave. Kalamazoo, MI 49007 Tel No. 616 383-8837

Saginaw County Friend of the Court 10<sup>th</sup> Circuit Director: Thomas L. Kaczmarek

615 Court Street, Saginaw, MI 48602 Tel No. 517 790-5300

Muskegon County Friend of the Court 14<sup>th</sup> Circuit Director: Ms. Patricia Steele

990 Terrace Street, Muskegon, MI 49442 Tel No. 616 724 6421

If your County is not listed please call your local County Court House to get information.

## PROCEDURES OF THE COURT

1. The Plaintiff begins by filing a Complaint or Petition for Divorce on the Defendant. This asks the Court to grant a divorce, orders child support or spousal support, establish a paternity case, start an out-of-state collection effort, and/or grant an order for custody of a child.
2. The Defendant must be given a copy of the summons and Complaint.
3. When the Defendant receives that papers (s)he is allowed time to answer the claims made, usually 21 days or (s)he may lose the right to be heard by the judge and result in an order granting the Plaintiff's requests.
4. The judge must find that there has been a breakdown in the marriage to the point that the parties cannot live together as husband and wife in order to grant a divorce. The judge will then enter a Judgment of Divorce that will bring the marriage to an end. Michigan is a no-fault divorce state so a divorce can be granted even if one of the parties does not want a divorce. The judgment of divorce contains the decisions of the Court which deal with custody, visitation, support, property and other related issues. From the date of filing of a Complaint for Divorce without minor children the waiting period is a minimum of 60 days. For divorce cases with minor children the waiting period is a minimum of six months. After the waiting period the judge may grant a divorce.

## TEMPORARY RESTRAINING ORDER OR PPO

You may need a temporary restraining order to prevent the other spouse from transferring or disposing assets and also awarding yourself temporary custody of children and a certain amount of child support. If there has been abuse of you or your children you will have to file a petition for personal protection order or PPO. This will be on the state police registry of a state wide computer system, which will effectuate the order immediately. If the spouse violates the PPO they could receive up to 90 days in jail. Of course, a show cause hearing must be held to determine if that person has violated such an order.

## THE IMPACT OF DIVORCE ON YOUR LIFE

Divorce is a difficult time and there a significant changes that take place. For instance, you lose contact with mutual friends, and you no longer are involved with the same social groups or organizations. In fact, most persons who go through a divorce feel it is incumbent upon themselves to make a drastic change. This is not recommended. For one to be able to get through such a difficult period it is important that gradual changes are made. A complete break off of mutual friends may be recommended because such contact with those persons may

remind one of the difficulties experienced throughout that marriage. It is important for divorced parents not to make too many drastic changes, especially for the sake of their children.

## DIVORCE AND YOUR CHILD/REN

Many children of divorced parents are likely to react with anger and to feel a guilt complex. For example, many children will feel that they have been the cause of the divorce and as a result may feel bitterness with both parents. It is your job as a parent to indicate to your child or children that they were not responsible for the breakup of the relationship and it is especially important in the beginning of the separation that parents continue to emphasize this with their children.

Keep your children involved in many of the activities they were involved with prior to the breakup of the marriage. It is especially important to maintain continuity for the children so as to minimize the difficulty in the transition for the children.

Do not put your child or children in a position where they feel they must choose between one parent or the other. It is important as a parent that you are as level headed as possible and not to have your child placed in an uncomfortable position of determining who they favor as a parent. Children love both parents equally and do not have the mental or emotional capacity to deal with a situation such as this. This can be very hurtful and devastating to the child, not only in the short term but possibly can have long term psychological impact for the rest of their lives. Do not discuss the reasons for the shortcomings in the marriage. Although you may want to be an open parent with the children, it is important that this openness be only dealt with when the children are old enough and sophisticated enough to understand the issues. It is further recommended that you should talk about the good things that have come out of the marriage if one of your children asks you questions regarding it. By doing so you are not only a positive role model, you are also helping to nurture a positive attitude with the child or children. By constantly being negative or displaying bad feelings towards the ex spouse, or discussing things that went wrong, you are helping to nurture a very angry child who feels they must have a preference of one parent over the other. By taking a negative attitude you are hurting the child's attitude and you could also help harbor even more bitterness than is necessary. The bottom line here is that you and your spouse are getting a divorce your children are not divorcing either one of you. So do not get your children involved in your bitter feelings about your spouse.

Your child should not be used as a pawn for disagreements that continue to exist between you and your ex-spouse. One of the most important issues confronting a parent after divorce is how they act or discuss the ex-spouse. Never use your child to deliver angry or hostile messages between you and your ex-spouse. Never use your child or children to deliver personal information about child support payments to your ex-spouse. Do not make comparison put-downs to your child regarding the ex-spouse.

It is important to remind your children that your friendships or relationships are not being used as a replacement to their parent. Tell the children they remain first and foremost in the minds of their parents. Emphasize to the child that they are not under any pressure to accept or reject your relationship.

The children should be given the maximum amount of visitation with the non-custodial parent. Just because the marriage failed does not mean your child or children is not entitled to a meaningful relationship with your ex-spouse. If anything, something good will usually come out of allowing the maximum amount of visitation. Unless there is a drug or alcohol problem or emotional and physical abuse during visitation, financial reason is not one reason to withhold visitation. For instance, if one spouse is behind in the child support payments it is not a reason to deny visitation. The parent who has the gripe with the system should petition the Friend of the Court for payments and to make the necessary arrangements to make themselves whole. It is clearly important that the child/ren not be used as pawns.

The child or children should be able to communicate freely with either parent and realize that such conversations will be kept private. Furthermore, that parent should not use those conversations to influence their behavior towards one parent or the other.

The parent should always assure their child that they will do their very best under the most difficult circumstance to make sure that child receives the best possible opportunities as if the parent were still married to the other spouse. For instance, as a parent, do not use newly found obligations with a new spouse as an excuse to deny your child/ren help. Some parents may feel that a new marriage precludes them from helping out their child/ren. That is a very poor excuse. If you deny your child opportunities because of your marriage, perhaps you should be denying yourself the full commitment and responsibility of that marriage. Although this may be a fascist point of view, your first and foremost responsibility is to an innocent child that you have brought into this world.

## GRIEVING YOUR LOSS

Divorce is many losses. It is the loss of a relationship, family and friends, security, social organizations, and your material possessions. This loss is similar to death. It is the death of your relationship and things that were familiar and comfortable to you. Since the loss from divorce is similar to the loss of death it should also be mourned in a similar fashion. Accepting the loss of divorce is very difficult. Many people will deny the loss and pretend it is only temporary or they will not accept it as a loss in their life because the marriage was so bad. Either way the divorce was a loss even if it was a horrible marriage and you are glad to have it over with. The reality of the loss must be accepted along with the feelings of grief that go along with it. The person must deal with feelings of anger, sadness, guilt and fear in order to heal the wounds of the loss. It would be wise to wait at least a year after your divorce to deal with your grief before getting involved in another relationship. Recognize that life will be different after the divorce and many things will change, but remember that these changes will ultimately make you a happier individual who can turn loss into opportunity. Now you have an opportunity to create the life you would like for yourself.

There is nothing you can do to change the past but everything you can do to make a better future.

## DIVORCE TERMINOLOGY

### A

#### ADULTERY

Consensual sexual relations by a married person with someone other than his or her spouse. Courts today are mainly interested in the economic impact of adultery, if any, on the marital estate such as how much money was spent on the mistress.

#### ADMISSIBLE;ADMISSIBILITY

The evidence that a trial judge or jury may consider, because rules of evidence deem it reliable

#### AFFIDAVIT

A written statement, voluntarily signed under oath, usually in support of a motion.

#### AGREEMENT; SEPARATION AGREEMENT; PROPERTY SETTLEMENT AGREEMENT; MARITAL AGREEMENT

A legally enforceable, spousal contract settling issues related to asset and liability division, alimony, health, and life insurance, legal and physical custody, child support, visitation, medical insurance and expenses, and education.

#### ALIMONY

The money paid by one ex-spouse to the other for support under the terms of a court order or settlement agreement following a divorce. Except in marriages of long duration (ten years or more) or in the case of an ailing spouse, alimony usually lasts for a set period, with the expectation that the recipient spouse will become self-supporting. Alimony is also called "spousal support" or "maintenance." Payments are tax deductible to the payor and includable in the payee's taxable income.

#### ALIENATION OF AFFECTION

Any intentional, malicious interference with a marital relationship.

#### ANNULMENT

A court procedure that dissolves a marriage and treats it as if it never happened. Annulments are rare since the advent of no-fault divorce.

#### ANSWER TO COMPLAINT (PETITION) AND COUNTERCLAIM

A responsive pleading that answers allegations made in the complaint.

#### ANTENUPTIAL AGREEMENT

See Prenuptial Agreement

#### APPEAL

A written request to a higher court to modify or reverse the judgment of a trial court or intermediate level appellate court. Normally, an appellate court accepts as true all the facts that the trial judge or jury found to be true, and decides only whether the judge made mistakes in understanding and applying the law.

**APPEARANCE**

A court filing registering the name of your lawyer, or, if you are representing yourself, your name as “pro se”.

**ARBITRATION**

A non-court procedure for resolving disputes using one or more neutral third parties—called the arbitrator or arbitration panel. Arbitration uses rules of evidence and procedure that are less formal than those followed in trial courts, which usually leads to a faster, less expensive resolution.

**ARREARAGES**

The difference between the amount of alimony or child support paid, if any, and the amount required under court order. In recent years, state laws have made it difficult to impossible to get rid of arrearages; they can't be discharged in bankruptcy, and courts usually will not retroactively cancel them. A spouse or parent who falls on tough times and is unable to make payments should request a temporary modification of the payments before the arrearages build up.

**B****BEST INTEREST OF THE CHILD**

The legal standard or doctrine for making child-related decisions.

**BURDEN OF PROOF**

The party asserting a claim must prove such claim is true.

**C****CAPIAS**

A civil arrest warrant ordering the sheriff or other officer to take a person into custody and deliver him to court. This procedure is used when a party refused to appear in court.

**CAUSE OF ACTION**

A lawsuit for a specific legal claim such as for negligence, breach of contract, or medical malpractice for which a plaintiff seeks compensation. Each cause of action is divided into discrete elements, all of which must be proved to present a winning case.

**CHANGE OF VENUE**

Venue is where a court, with proper jurisdiction, will hear the case. When a case is transferred to a new location within the same jurisdiction (county or state), the transfer is called a change of venue.

**CHILD ABDUCTION (PARENTAL KIDNAPPING)**

The act of one parent illegally taking a child in violation of court order. The Federal Parental Kidnapping Prevention Act requires states to cooperate with each other in returning children kidnapped by a parent.

### CHILD CUSTODY

The legal authority to make decisions affecting a child's interests which is legal custody and the responsibility of taking care of the child which is physical custody. When parents separate or divorce, one of the hardest decisions they have to make is which parent will have custody. The most common arrangement is for one parent to have custody (both physical and legal) while the other parent has a right of visitation. But is not uncommon for the parents to share legal custody, even though one parent has physical custody.

### CHILD SUPPORT

The amount of money that the non-custodial parent pays to the custodial parent to help pay for the every day needs of the child/ren such as housing, food, and clothing.

### CHILD SUPORT GUIDELINES

The amount of child support to be paid, under normal circumstances, according to a schedule established by the state, based upon income.

### COBRA

Consolidated Omnibus Budget Reconciliation Act. Federal legislation that guarantees all person covered by medical insurance, the right, for a monthly fee, to continue coverage even if employment or marital status changes.

### CODE OF PROFESSIONAL RESPONSIBILITY

A code of conduct, also known as the Code of Professional Responsibility, imposed on attorneys. Violations may subject the attorney to disciplinary proceedings and malpractice claims.

### CONFLICT OF INTEREST

Lawyers are prohibited from entering certain relationships in which the lawyer, by virtue of his profession, received or appeared to receive confidential information about the opposing party. No lawyer can ever represent both sides in a divorce, even if uncontested.

### COHABITATION

Unmarried persons living together as if married. Cohabitation during divorce can make a bad impression on the court and is usually unwise. It is a problem when the parties have minor child/ren and the custodial parent takes in a lover during the divorce process and the non-custodial parent files a motion to prevent such behavior or when an ex-spouse receiving alimony, cohabitates rather than remarries in order not to lose alimony.

### CONJUGUAL RIGHTS

The right of married persons to enjoy each other's physical comfort.

### COMMENCEMENT OF ACTION

The official beginning of your case, defined as the time of filing your Complaint for Divorce with the court.

### COMMON LAW

A body of law, sometimes referred to as “case law” developed by judges over many years which establishes how courts interpret statutes and handle matters not specifically covered by statutes.

### COMMON LAW MARRIAGE

In some states, a type of marriage in which couples can become legally married by living together for a long period of time, representing themselves as a married couple and intending to be married. The couple must intend to be married and act as though they are for a common law marriage to take effect; merely living together for a long time will not be sufficient.

### COMMUNITY PROPERTY

A rule of property division which divides equally all property acquired during the term of the marriage, without regard to whose name it is held by. Inheritances and gifts are excluded in some jurisdictions.

### COMPLAINT FOR DIVORCE

The formal document filed with the court which states that the plaintiff wants a divorce and why.

### CONSOLIDATION

The joining of two related cases.

### CONTEMPT OF COURT

Legal action brought when the plaintiff/petitioner alleges a willful failure to obey a court order or judgment.

### CONTESTED DIVORCE/UNCONTESTED DIVORCE

The party sued opposes because she/he denies the asserted grounds or he/she does not agree with the suing party as to the terms of the divorce. In uncontested divorces, the parties agree to all matters, and present an executed separation agreement to the court for approval.

### CONTINGENCY FEE IN DIVORCE CASES

An unethical agreement that provides the lawyer with a percentage of your settlement or judgment in divorce proceeds. Such fees in divorce cases are prohibited by the Canons of Ethics in most states.

### CO-RESPONDENT

A third party co-defendant in a divorce action accused of committing adultery with the defendant.

### COURT ARBITRATOR

Court employees to whom cases are referred for dispute resolution. Also called Family Court Officer, Court Service Officer, Court Mediator.

**COURT DOCKET**

The formal court record of proceedings before it. Notations of all pleadings, orders, and judgments are entered into a docket book.

**COURT INVESTIGATOR**

A person appointed by the court, usually to investigate child-related matters, and file a report with the court.

**COURT ORDER**

A written instruction from the court carrying the weight of law, the knowing violation of which constitutes contempt of court.

**COVETURE**

The period of time during which a women is married.

**CROSS-EXAMINATION**

Following the direct examination of a witness, cross-examination is the follow-up questioning.

**CRUEL AND ABUSIVE TREATMENT**

Grounds for divorce in a fault divorce, wherein the plaintiff must prove physical and emotion harm to her or himself.

**CUSTODIAL PARENT**

Usually refers to the parent with whom the child/ren reside.

**CUSTODY (LEGAL)**

A legal status vesting authority to approve all major decisions affecting a minor child. Joint, split and shared legal custody require both parents' approval of all major decisions.

**CUSTODY (PHYSICAL)**

Relates the physical location of the child. The adult with whom the child resides is said to have physical custody. Such terms as sole, primary, shared and joint are used to describe various parenting and visitation plans.

**D****DEFENDANT**

A person against whom a claim or charge is brought in a court.

**DEPOSITION (also called discovery or pretrial discovery)**

An important tool used n pretrial discovery where on party questions the other party or a witness in the case. Often conducted in an attorney's office, a deposition requires that all questions be answered under oath and be recorded by a court reporter, who creates a deposition transcript.

**DESSERTION**

The voluntary abandonment of one spouse by the other, without the abandoned spouse's consent. Commonly, desertion occurs when a spouse leaves the marital home for a specified length of times. Desertion is grounds for divorce in states with fault divorce.

**DISINHERIT**

To deprive a rightful heir from his or her inheritance. State laws prohibit spouses from disinheriting each other. The surviving spouse is usually entitled to at least one-third, no matter what is contained in the will.

**DOMICILE**

A person's legal home. In divorce, domicile is important in establishing jurisdiction and selecting venue.

**DOWER/CURTESY**

A surviving spouse's right to receive a set portion of the deceased spouse's estate, usually one-third to one-half. Dower refers to the portion to which a surviving wife is entitled, while curtesy refers to what a man may claim. Because of discrimination on the basis of sex is now illegal in most cases, most states have abolished dower and curtesy and generally provide the same benefits regardless of sex. This amount is often known simply as the statutory share.

**E****EMANCIPATION**

Refers to the point at which a child is free from parental control. It occurs when the child's parents no longer perform their parental duties and surrender their rights to the care, custody, and earnings of their minor child. Emancipation may be the result of a voluntary agreement between the parents and child, or it may be implied from their acts and ongoing conduct.

**EQUITABLE DISTRIBUTION**

In equitable distribution states, all property, whenever or however acquire, regardless of legal title, is subject to equal or unequal division.

**EXHIBITS**

Any evidence attached to a pleading or introduced at trial.

**EX PARTE (HEARING, MOTION, ORDER)**

Without notice to, or attendant of, the opposing party.

**EXPERT WITNESS**

In divorce cases, most experts are called to testify as to the value of the marital home, pensions, and privately held businesses. In child related disputes, mental health professionals are often called to testify.

**F**

**FAIR AND REASONABLE**

The judicial standard for approving martial agreements.

**FAULT & NO FAULT DIVORCE**

In fault divorces, the Complaint for Divorce must state grounds for divorces. They include cruel and abusive treatment, adultery, abandonment, and other types of misconduct. No-fault complaints for divorce merely allege an “irretrievable breakdown” of the marriage, or use similar language. The court must find that the marriage has “irretrievable broken down,” leaving no change of reconciliation.

Since the 1970’s most states have allowed no-fault divorces. No-fault divorces are contested or uncontested. Where the parties present an agreement for the court’s approval, their divorce is said to be uncontested. If the parties can’t negotiate an agreement, their divorce is contested and goes to trial.

**FILE**

Any document submitted to and officially docketed by the court.

**FINAL JUDGMENT**

After a court enters a final judgment, you may remarry.

**FINDINGS**

After considering the evidence presented a court or jury interprets the evidence and sets forth what it believes are the actual facts. Courts have great latitude in weighting evidence and in believing or disbelieving witnesses. The court’s finding, along with its conclusions of law, form the basis for the court’s decisions.

**G****GARNISHMENT**

A court-ordered process that takes wages automatically deducted from a paycheck and paid to another party to satisfy a debt.

**GROUND FOR DIVORCE**

Each state’s divorce statutes set forth certain improper or troublesome behavior that constitutes a “legal reason” for the court to grant a divorce.

**GUARDIAN AD LITEM**

A person, not necessarily a lawyer, who is appointed by a court to represent and protect the interests of a child or an incapacitated adult during a lawsuit.

**H****HOLD HARMLESS**

In a contract, a promise by one party not to hold the other party responsible if the other party carries out the contract in a way that causes damage to the first party.

## I

**INJUNCTION**

A court decision that is intended to prevent harm, often irreparable harm, as distinguished from most court decisions, which are designed to provide a remedy for harm that has already occurred. Injunctions are orders that one side refrain from or stop certain actions, such as an order that an abuse spouse stay away from the other spouse or that a logging company not cut down first-growth trees. Injunctions can be temporary, pending a consideration of the issue later at trial. Judges can also issue permanent injunctions at the end of trials, in which a party may be permanently prohibited from engaging in some conduct.

**INTERLOCUTORY**

Any court hearing at which a pretrial order or ruling is requested.

**INTERLOCUTORY JUDGMENT**

The initial judgment of divorce. When courts grant divorces, their judgments are not final until the expiration of a statutory "waiting period" known as the interlocutory or nisi period.

**INTERROGATORY**

Written questions asked by one party of an opposing party, who must answer them in writing under oath.

**JOINT CUSTODY**

The children live with the residential custodian and visit with the non-residential parent. Both parties have an equal say in major decisions affecting the children.

**JOINT PETITION**

When both parties want the court to do the same thing, such as "dissolve a marriage" due to an irretrievable breakdown (no-fault) and approve a separation agreement (uncontested), the parties jointly request (by joint petition) the court to grant the divorce.

**JOINT PROPERTY**

Property held in the name of both spouses.

**JUDGMENT OF DIVORCE (also Divorce Decree, Decree of Dissolution)**

The court's final judgment after expiration of the interlocutory or judgment nisi period. Upon this date you are legally divorced and can remarry..

**JURISDICTION**

The authority of a court to hear and decide a case. To make a legally valid decision in a case, a court must have both power to hear the type of case in question, which is granted by the state legislatures and Congress and power to make a decision affecting the parties involved in the lawsuit. Which a court gets as a result of the parties' actions.

## L

## LEGAL SEPARATION

A legal separation is similar to a divorce, except no divorce judgment is granted that ends the marriage.

## M

**MAINTENANCE**-See alimony

## MALPRACTICE

The improper or incompetent behavior of your attorney. Violations of the Canons of (Legal) Ethics often constitute legal malpractice.

## MARITAL ASSETS

All property acquired during the course of the marriage regardless of who owns or has title to it. It includes but is not limited to the following: house(s), other real estate, cash, stocks, bonds, motor vehicles, pensions, profit sharing plans, and insurance.

## MEDIATION

Process by which you work with a neutral third party to prepare your divorce agreement. This process is voluntary and non-binding.

## MEMORANDUM OF LAW

A legal document filed along with pleadings or other court papers setting forth your lawyer's legal research in support of a request to the court.

## MOTION

A request for some type of action or decision to be made by the court.

## N

## NECESSARIES

The common law doctrine that if a person who owes another person the duty of support and fails to support such person he becomes liable to third parties who provide necessities such as the grocer and utility company to person owed a duty of support.

## NEGOTIATED SETTLEMENT OR AGREEMENT

The parties, usually with counsel, develop a separation agreement. These agreements are not mediated or arbitrated.

## NON-CUSTODIAL PARENT

A parent who does not have physical custody.

**NOTICE**

The procedure for informing a party that a legal action or motion is pending before a court.

**NUPTIAL**

Pertaining to marriage.

**P****PALIMONY**

Division of property or alimony-like support given by one member of an unmarried couple to the other after they break up.

**PARENS PATRIAE**

The right of the state to take charge of the care and custody of minor children or other legal incompetents when their health or safety so requires.

**PENDENTE LITE SUPPORT**

A temporary order of the Court that provides support until the divorce is finalized.

**PERJURY**

Knowingly lying under oath

**PLAINTIFF**

The person who files the divorce complaint and sues the person for divorce.

**PLEADINGS**

Includes the complaint, answer, and counterclaim.

**POSTNUPTIAL AGREEMENT**

Same as prenuptial agreement, but entered during the term of the marriage, often revising a prenuptial agreement.

**PRELIMINARY HEARING**

Any court proceeding that occurs prior to trial.

**PREMARITAL ASSETS**

Assets acquired before marriage.

**PRENUPTIAL AGREEMENT**

A written, premarital contract dealing with death and divorce which sets forth the rights and responsibilities of the parties upon occurrence of these events.

**PRETRIAL CONFERENCE**

A meeting of all parties and counsel with the trial judge.

**PROBATE**

The legal process of administering decedents' estates.

**PRO SE**

To represent yourself in court proceedings without an attorney.

**Q****QDRO-Qualified Domestic Relations Order**

A ruling by the court stating what portion of one spouse's pension is to be awarded to the other spouse.

**QID PRO QUO**

The giving of one valuable thing for another.

**R****RESTRAINING ORDER**

A court order prohibiting a party from certain activities issued in response to a motion. Restraining orders often are issued to protect marital assets and to protect against domestic violence. In many states, violating a "domestic restraining order" is a criminal offense.

**RECRIMINATION**

If the defendant is accused of adultery, recrimination is the counterclaim when the plaintiff is accused of adultery, too.

**RECUSAL**

A situation in which a judge or prosecutor is removed or steps down from a case.

**REHABILITATIVE ALIMONY**

Short-term spousal support designed to help the recipient get started with her new life.

**REMOVAL OF A MINOR CHILD**

The legal proceeding, usually brought by complaint, by the custodial parent to move the minor child/ren from the state.

**RETAINER AGREEMENT**

A fee paid in advance for services to be rendered.

**RULES OF EVIDENCE**

The statutory rules governing testimony, documents, and demonstrative materials.

**S****SANCTIONS**

Under the Rules of Procedure, courts may penalize or sanction a party or counsel for improper behavior, such as making frivolous claims.

**SELF INCRIMINATION**

The right of the accused not to admit criminal wrongdoing.

**SEPARATE PROPERTY**

Property not considered part of the marital estate.

**SERVICE**

The legal process of giving notice that a complaint or motion is pending.

**SOLE CUSTODY**

The custodial parent has the power to make all decisions, including day-to-day decisions as well as major decisions, concerning the child/ren's health, education and welfare without notice to and consent from the non-custodial parent.

**SUBPEONA**

A court order to attend a legal proceeding such as a trial or deposition. If documents are also requested, the subpoena is called a subpoena duces tecum. Latin for "bring with you." Sometimes a subpoena duces tecum states that you must produce certain documents by a specific date without having to appear.

**SUMMARY JUDGMENT**

A procedural rule that allows judges to enter judgments without trial, generally used when only questions of law, and not fact, are at issue.

**SUMMONS**

A paper prepared by the plaintiff and issued by a court that informs the defendant that he/she has been sued.

**T****TENANCY BY THE ENTIRETY**

The manner in which jointly owned real estate is usually held by married couples. The surviving spouse, if the parties were married at the time of death, becomes the sole owner automatically.

**TORT**

An injury to one person for which the person who caused the injury is legally responsible.

**V****VISITATION**

The right to see a child regularly, typically awarded by the court to the parent who does not have physical custody of the child. The court will deny visitation rights only if it decides that visitation would hurt the child so much that the parent should be kept away.

#### LEGAL DISCLAIMER

John Graziani, the author of this Divorce Manual, has given you useful and accurate information about. This manual, however, does not take the place of retaining a lawyer. If you need professional help, please seek the counsel of an appropriate professional to help you get the answers you need for your particular situation.

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